

CHAPTER 293
SB 155-FN-A - FINAL VERSION

03/19/2015 0805s
6Jan2016... 2504h
9Mar2016... 0440h
06/01/2016 1999CofC
06/01/2016 2144EBA

2016 SESSION

15-0332
01/03

SENATE BILL ***155-FN-A***

AN ACT establishing the Financial Resources Mortgage (FRM) victims' contribution recovery fund for victims of the FRM fraud and continually appropriating a special fund.

SPONSORS: Sen. Avard, Dist 12; Sen. D'Allesandro, Dist 20; Sen. Reagan, Dist 17; Rep. Gidge, Hills 33; Rep. Burt, Hills 39

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

This bill establishes a process for restitution assistance for victims of the Financial Resources Mortgage (FRM) fraud. Under this bill, the director of charitable trusts shall hire or appoint an attorney or administrator to review applications for and make restitution assistance to victims from the FRM victims' contribution recovery fund.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struckthrough.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/19/2015	0805s
6Jan2016...	2504h
9Mar2016...	0440h
06/01/2016	1999CofC
06/01/2016	2144EBA

In the Year of Our Lord Two Thousand Sixteen

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 293:1 Statement of Purpose.

I. The general court hereby finds that there has been documented evidence that certain state agencies made mistakes knowingly or unknowingly that resulted in the continuation of the Financial Resources Mortgage (FRM) fraud causing financial harm to many victims.

II. Therefore, the general court hereby establishes the FRM victims' contribution recovery fund to receive contributions to provide restitution assistance for victims of the FRM fraud.

293:2 New Chapter; FRM Victims' Contribution Recovery Fund. Amend RSA by inserting after
chapter 359-O the following new chapter:

CHAPTER 359-P

FRM VICTIMS' CONTRIBUTION RECOVERY FUND

11 359-P:1 Definitions. In this chapter:

I. “Claimant” means a person who is a victim of the Financial Resources Mortgage fraud and who has filed a complete application for recovery assistance under this chapter.

14 II. "Director" means the director of charitable trusts, department of justice.

III. "Financial Resources Mortgage" means Financial Resources Mortgage, Inc., C L and M, Inc., and any predecessor, successor, or affiliated entities, and any entities established by, through, or with Scott Farah or Donald Dodge, through which moneys of Financial Resources Mortgage, Inc., C L and M, Inc., and any predecessor, successor, or affiliated entities passed.

IV. “Financial Resources Mortgage fraud” means fraudulent acts committed by Financial Resources Mortgage or its principals where loans were brokered by or serviced by Financial Resources Mortgage.

22 V. “Fund” means the FRM victims’ contribution recovery fund established in RSA 359-P:2.

23 VI. "Person" means an individual, corporation, partnership, association, joint stock
24 company, unincorporated organization, or any other entity.

VII. “Qualifying claimant” means a person who suffered financial losses as a result of the Financial Resources Mortgage fraud and is a claimant eligible for recovery assistance under this chapter. Qualifying claimant shall not include a borrower under any loan transaction borrowed or

CHAPTER 293
SB 155-FN-A - FINAL VERSION
- Page 2 -

1 serviced by Financial Resources Mortgage.

2 VIII. "Recovery assistance" means payments from the fund to persons who suffered
3 financial losses as a result of the Financial Resources Mortgage fraud.

4 IX. "Victim" means a person who suffered monetary injury as a result of the Financial
5 Resources Mortgage fraud.

6 359-P:2 FRM Victims' Contribution Recovery Fund Established.

7 I. There is hereby established the FRM victims' contribution recovery fund. The fund shall
8 be nonlapsing and continually appropriated to the director. The fund shall be capped at
9 \$10,000,000 and shall consist of gifts and contributions of any kind.

10 II. The fund shall be used for awarding recovery assistance pursuant to this chapter.

11 III. The total amount in the fund less costs of administration shall be distributed on a pro
12 rata basis to qualifying claimants annually on December 31 until all such claims are satisfied.

13 359-P:3 Eligibility for Recovery Assistance.

14 I. Except as otherwise provided in this chapter, a claimant shall be eligible for recovery
15 assistance at the rate of 50 cents on each dollar lost by the claimant under this chapter if the
16 claimant:

17 (a) Submits all supplemental documents as requested by the attorney or administrator.

18 (b) Can demonstrate loss due to the Financial Resources Mortgage fraud.

19 (c) Meets all other requirements of this chapter.

20 II. In addition to a qualifying claimant and except as otherwise provided in this chapter, a
21 surviving spouse or surviving child of a qualifying claimant shall be eligible for recovery assistance
22 under this chapter.

23 359-P:4 Attorney/Administrator. The director shall hire/appoint a private attorney or
24 administrator who shall collect gifts and contributions, review applications for assistance submitted
25 pursuant to this chapter, make awards of assistance in accordance with the procedures of this
26 chapter, and report annually to the director commencing on February 1, 2017 and each February 1
27 thereafter. The director shall negotiate the attorney's or administrator's compensation which in
28 any calendar year shall be no more than 10 percent of any private sector contributions received in
29 that calendar year.

30 359-P:5 Recovery Assistance.

31 I. A victim eligible for recovery assistance under RSA 359-P:3 may file an application for
32 recovery assistance with the attorney or administrator on the following form:

33 Financial Resources Mortgage, Inc and CL&M, Inc. Victims Indemnification Application

34 Name _____

35 Address _____

36 _____

37 Phone _____

CHAPTER 293
SB 155-FN-A - FINAL VERSION
- Page 3 -

1 E-mail_____

2 Social Security No._____

3 I.) Proof of Claim Federal Bankruptcy Court Case 09-14565-JMD and 09-14566-JMD date filed

4 _____

5 Loans or Mortgages claimed (copy attached)

6 1. _____ Amount \$ _____

7 2. _____ Amount \$ _____

8 3. _____ Amount \$ _____

9 4. _____ Amount \$ _____

10 5. _____ Amount \$ _____

11 6. _____ Amount \$ _____

12 7. _____ Amount \$ _____

13 8. _____ Amount \$ _____

14 9. _____ Amount \$ _____

15 10. _____ Amount \$ _____

16 Total Proof of Claim Amount \$ _____

17 II.) Were you a defendant in case no. 09-1184-JMD? Yes No

18 Were you dismissed from the case? Yes No

19 III.) Did you settle with the Trustee? Yes No

20 Did you make a payment to the Trustee for the benefit of the bankruptcy estates to settle with
21 the Trustee? Yes No Amount \$ _____

22 IV.) List any additional payments to the trustee as a result of any mortgage foreclosed, sold, or
23 repaid as a condition of your settlement. Example: Agreed to split proceeds 80/20 with Trustee.

24 1. _____ Amount \$ _____

25 2. _____ Amount \$ _____

26 3. _____ Amount \$ _____

27 4. _____ Amount \$ _____

28 5. _____ Amount \$ _____

29 Post settlement payments to Trustee Amount \$ _____

30 V.) Did you retain 100% ownership of any mortgages as a result of settlement? Yes (list below) No

31 1. _____ Amount \$ _____

32 2. _____ Amount \$ _____

33 3. _____ Amount \$ _____

34 4. _____ Amount \$ _____

35 5. _____ Amount \$ _____

36 Total Retained 100% ownership \$ _____

37 VI.) List any payment from the Trustee on any mortgage he or she foreclosed on, sold, or received

CHAPTER 293
SB 155-FN-A - FINAL VERSION

- Page 4 -

repayment of principal and from which proceeds were agreed to be split with you as a result of settlement.

1. _____ Amount \$ _____

2. _____ Amount \$ _____

3. _____ Amount \$ _____

4. _____ Amount \$ _____

5. _____ Amount \$ _____

Total Split Proceeds received from Trustee post settlement \$ _____

VII.) Final Distribution of Bankruptcy Estate by Trustee received by you \$ _____

VIII.) Total Interest received from FRM or CL&M January 2006

through November 2009 \$ _____

(attach form 1040 and Schedule B, Interest and Dividends, for 2006-2009)

Calculate Loss:

A. Total Section I. Proof of Claim \$ _____

Total Section III. Settlement Payment \$ _____

Total Section IV. Proceed split payment to Trustee \$ _____

Total A. \$ _____

B. Total Section V. 00% Retained Mortgages \$ _____

Total Section VI. Proceed Split receipt from Trustee \$ _____

Total Section VII. Final Distribution from Trustee \$ _____

Total Section VIII. Interest Received \$ _____

Total of any other awards not otherwise accounted for \$ _____

Total B. \$ _____

C. Total A minus Total B. Allowable Loss \$ _____

Signature _____

Date _____

Signed under penalty of perjury

For administration purposes only

Grand Total All Losses submitted \$ _____

(name) _____ allowable loss submitted \$ _____

Percent of Grand Total submitted _____%

II. The complete application shall be received not more than 180 days after the effective date of this section. An extension of time may be granted for good cause shown by the claimant. However, an application that is received more than 270 days after the effective date of this section shall not be accepted. The attorney or administrator shall send a notice regarding the process for recovery under this chapter to the last known address of potential claimants.

III. All applications filed in compliance with this chapter shall be accepted. Processing of

CHAPTER 293
SB 155-FN-A - FINAL VERSION

- Page 5 -

1 an application shall begin upon receipt of a complete application. All applications shall be reviewed
2 by the attorney or administrator to ensure that the applications are complete. If an application is
3 not complete, it shall be returned to the claimant with a brief statement of the additional
4 information required. The application shall be denied if the applicant does not furnish additional
5 information or additional time is not granted for good cause. Once an application is accepted as
6 complete, the applicant shall be so notified.

7 IV. The attorney or administrator shall determine the amount of loss of original
8 investments, if any, of each claimant and the pro rata share to be distributed to a claim
9 demonstrating loss.

10 V. Recovery assistance shall be limited to 50 cents on each dollar lost on the amount of the
11 claimant's original investment.

12 VI. The attorney or administrator may consider individual claims filed by persons owning a
13 joint interest that was subject to loss due to the Financial Resources Mortgage fraud, but any
14 recovery awarded shall only be to the extent of each individual claimant's original investment.

15 359-P:6 Awards Under This Chapter Set Off Against Any Other Recovery.

16 I. The amount of any award made under this chapter shall be set off against any other
17 recovery sources, including, but not limited to awards from private suits, arbitration, bankruptcy
18 court awards or settlements, or other sources of recovery.

19 II. In the event a qualifying claimant receives an award from a recovery source listed in
20 paragraph I subsequent to the filing of a claim under this chapter, the claimant shall immediately
21 notify the attorney or administrator of the award. The attorney or administrator shall then modify
22 the claimant's award and pro rata share by offsetting such award against the claimant's award
23 under this chapter.

24 359-P:7 Recovery Assistance Prohibited. Recovery assistance shall not be awarded if the
25 attorney or administrator for the attorney or administrator determines the claimant:

26 I. Sustained the monetary injury as a result of participating or assisting in or attempting to
27 commit or committing financial fraud with Financial Resources Mortgage; or

28 II. Profited or would have profited from the financial fraud of Financial Resources
29 Mortgage.

30 359-P:8 Award Not Subject to Other Processes. An award made under this chapter shall not be
31 subject to execution, attachment, garnishment, or other process. A claimant convicted of forgery,
32 fraud, or deception in connection with a claim under this chapter shall forfeit an award paid to the
33 claimant under this chapter.

34 359-P:9 Liability of State. The state shall be under no obligation or liability under this chapter
35 except to make payments to claimants to whom the recovery fund attorney or administrator has
36 made awards of assistance, but only to the extent there is money available in the fund.

37 359-P:10 Claims Prior to January 1, 2006. Claims for restitution assistance shall not be

CHAPTER 293
SB 155-FN-A - FINAL VERSION

- Page 6 -

accepted for any losses that occurred prior to January 1, 2006 due to financial fraud.

293:3 New Subparagraph; FRM Victims Contribution Recovery Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (331) the following new subparagraph:

(332) Moneys deposited under the FRM victims' contribution recovery fund, established in RSA 359-P:2.

293:4 Victim's Assistance Account; Department of Justice; FRM Victims Added. Amend RSA 21-M:8-h, I(a)(4) to read as follows:

(4) Any person who is a victim of human trafficking and has been tattooed with an identifying mark of human trafficking by a person who has forced him or her into trafficking;

(5) Victims of the FRM fraud.

293:5 Applicability. Upon repeal of the FRM victims' contribution recovery fund, established in RSA 359-P:2, on July 1, 2023, any remaining moneys in such fund shall be deposited in the victim's assistance account established in RSA 21-M:8-g and shall be used to compensate any remaining victims of the FRM fraud.

293:6 Repeal. The following are repealed:

I. RSA 359-P, relative to a recovery fund for victims of the Financial Resources Mortgage (FRM) fraud.

II. RSA 6:12, I(b)(332), relative to the FRM victims' contribution recovery fund.

293:7 Effective Date.

I. Sections 4 through 6 of this act shall take effect July 1, 2023.

II. The remainder of this act shall take effect 60 days after its passage.

Approved: June 21, 2016

Effective Date: I. Sections 4-6 shall take effect July 1, 2023

II. Remainder shall take effect August 20, 2016

